



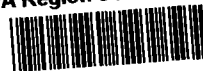
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



275787

REPLY TO THE ATTENTION OF:

C-14J

APR 13 2001

VIA Facsimile (513) 721-7377

AND U.S. MAIL

CONFIDENTIAL AND INADMISSIBLE

SETTLEMENT COMMUNICATION

Acme Wrecking Co., Inc.
Charles M. Meyer, Esq.
Santen & Hughes
312 Walnut Street, Suite 3100
Cincinnati, OH 45202

Re: Skinner Landfill in West Chester, Ohio

Dear Chuck:

I am in receipt of your letter dated April 3, 2001, in which you reject U.S. EPA's offer of \$136,000 to resolve all claims against Acme Wrecking at the Skinner Landfill Site. In that letter you make a counterproposal of \$50,000 paid in 16 installments of \$12,500 over four years. I understand from your letter that Acme is neither willing nor able to pay \$136,000 to resolve its liability at the Site. In particular, Acme disputes the number and volume of loads in the Allocator's Final Report (i.e., 6,030 cys - the volumetric share assigned to Acme, especially the loads assigned to Acme after 1968 - 3,750 cys), and its ability to pay the settlement offer. Your counter proposal is derived by taking 37.8 % (the percentage of Acme's total share the Allocator assigned to shipments between 1965 and 1968) of \$136,000.

Regarding your arguments about the volume of waste assigned to Acme, particularly the post-1968 loads, as you are aware U.S. EPA was not a party to the ADR and did not participate in depositions or otherwise develop evidence through the ADR. In an effort to settle its claims at the Skinner Landfill and implement

the Remedial Action, U.S. EPA has accepted the Allocator's Final Report in reaching settlements with all of the parties that entered into the Remedial Action Consent Decree ("RA CD"). Many of the parties that entered into the RA CD also disputed the Allocator's findings, but ultimately accepted the findings because the evidence was difficult for all of the parties and avoiding the cost of litigation justified a settlement. It is my understanding from conversations with counsel involved in the contribution case DOW Chemical v. Acme Wrecking, that given the number of parties and the long and disputed history of the Site, Judge Weber has taken a broad view of the evidence and has encouraged parties to accept the ADR findings. I would encourage Acme to again consider the expense of litigating these matters before rejecting U.S. EPA's settlement offer. I would also point out that the Allocator already adjusted down the waste-in amount assigned to Acme based upon Acme's arguments that it should not be assigned any shipments after 1968. The Allocator cut Acme's volumetric share by more than half, from 13,530 cys in the Preliminary Report, to 6,030 cys in the Final Report.

With respect to your rejection of any settlement that includes shipments after 1968, I have reviewed the portions of the Allocator's Preliminary and Final Report pertaining to Acme, and disagree with your conclusion that there is no evidence to support the inclusion of shipments after 1968. The Allocator found the testimony of several witnesses, including Dick Clarke, Lloyd Gregory, Roger Ludwig, Rodney Miller and Ray Skinner, all of whom remembered Acme trucks at the Landfill after 1968, persuasive enough to justify attributing post-1968 shipments to Acme. I am aware that the Allocator did alter the amount of waste he attributed to the post-1968 shipments in response to some apparent confusion among witnesses between Acme Wrecking and Acme Construction. In addition, Elsa Skinner stated that Acme did not use the Site after the shipments recorded in the Skinner Log. Nonetheless, the Allocator did assign Acme waste for this period based upon witness testimony. Since U.S. EPA did not participate in the ADR it is impossible to second guess the Allocator's findings since he conducted the depositions and is in the best position to judge the credibility of the witnesses and weigh all of the evidence.

Finally, with respect to your statement that Acme is not in a position to pay \$136,000 to settle these claims, U.S. EPA has not been presented with any financial documents to support an inability to pay claim, and is not aware of Acme ever making such a claim until now. "Ability to pay" claims must be substantiated, and U.S. EPA requires parties making a claim to submit tax returns for the past three years and any other financial documentation of an inability to pay in order to justify a lower payment. At this point U.S. EPA cannot accept a statement without more to justify lowering the settlement based

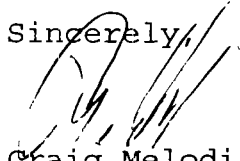
that would enable the United States to evaluate Acme's current financial condition); (2) tax returns for 1997, 1998, 1999, and 2000 (if Acme's 2000 return is not yet completed, Acme should so advise the United States and indicate when Acme expects to complete it); (3) documents showing Acme's budget projections for 2001 and onwards (if such documents exist); and (4) any other documents that Acme wishes to submit to establish its limited ability to pay. The documents should be federal expressed to:

Annette M. Lang
Department of Justice
1425 New York Ave., N.W.
Rm. 13073
Washington, D.C. 20005

After an initial review of the documents requested in this letter, further documentation may be necessary, but the United States will let you know. At this point U.S. EPA cannot accept Acme's claimed inability to pay without more to justify lowering the settlement.

I am happy to continue these discussions and am still confident that we can resolve these claims against your client. I cannot, however, recommend your counterproposal to my management or to the Department of Justice. Please note that I will be out of the office beginning April 12th, and will return on April 23rd. If you would like to discuss any of these issues before my return, please contact Annette Lang at (202) 514-4213.

Sincerely,



Craig Melodia
Assistant Regional Counsel

cc: Annette Lang, U.S. DOJ (Via Fax: (202) 616-6584)

upon ability to pay.

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